

**STATE OF WISCONSIN  
DEPARTMENT OF COMMERCE**

**IN THE MATTER OF: The claim for  
reimbursement under the PECFA  
Program by**

MADISON HEARING OFFICE  
1801 Aberg Ave., Suite L  
P.O. Box 7975  
Madison, WI 53707-7975  
Telephone: (608) 242-4812  
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William Trachte

**Hearing Number: 96 - 6  
Re: PECFA Claim #53094-4504-16**

**PROPOSED HEARING OFFICER DECISION**

**NOTICE OF RIGHTS**

Attached are the Proposed Findings of Fact, Conclusions of Law, and Order in the above-stated matter. Any party aggrieved by the proposed decision must file written objections to the findings of fact, conclusions of law and order within twenty (20) days from the date this proposed decision is mailed. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your objections and argument to: Madison Hearing office, P.O. Box 7975, Madison, WI 53707-7975. After the objection period, the hearing record will be provided to Patrick J. Osborne, Executive Assistant of the Department of Commerce, who is the individual designated to make the FINAL Decision of that department in this matter.

**STATE HEARING OFFICER**  
David C. Wagner

**DATED AND MAILED:**

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**MAILED TO:**

**Appellant Agent or Attorney**

William Trachte  
Insurance Service Center  
17835 Hickory Court  
Brookfield, WI 53045

Department of Commerce

Kristiane Randal  
Assistant Legal Counsel  
P.O. Box 7969  
Madison, WI 53707-7969

On June 2, 1995, the Department of Industry, Labor and Human Relations, now the, Department of Commerce, (hereinafter referred to as the department), issued an appealable order denying William Trachte (hereinafter appellant) reimbursement in the amount of \$1159.86 under the PECFA Program. The appellant filed a timely appeal on June 12, 1995, and requested reimbursement of the denied costs. Pursuant to that appeal, a hearing was held on October 21, 1996, at Madison, Wisconsin, before David C. Wagner, acting as a hearing officer.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

#### PROPOSED FINDINGS OF FACT

At all times material, the appellant was the legal owner of premises located at 216 South Third Street, Watertown, Wisconsin and the buildings therein are rented as commercial office space.

2. In March of 1991, the appellant retained Warzyn Incorporated (hereinafter agent) to conduct a sampling investigation at the above-noted property to determine if there was any contamination from gasoline and fuel oil tanks.

3. Because contamination was found at the site, in March of 1992, ground water monitoring was also installed at the site.

4. Laboratory testing of the samples found elevated levels of petroleum compounds. On November 10, 1992 and on October 13, 1993, the department issued decisions to the appellant and reimbursed the appellant the costs incurred therein. In each award it subtracted from the total amount payable deductible amounts. Neither of these decisions were appealed by the appellant.

5. When the department made its third award, the determination now under appeal, the aforementioned deductible reduced the award, and the appellant contends this was an error as the deductible should have been applied to the contamination of the entire site, as opposed to being applied to different sources of contamination.

#### APPLICABLE STATUTES

Section 101.143 (4) (d) provides in relevant part, as follows:

(d) Awards for claims; underground systems.

1. The department shall issue an award under this paragraph for a claim filed after July 31, 1987, for eligible costs, under par. (b), incurred on or after August 1, 1987, and before July 1, 1995, by the owner or operator of an underground petroleum product storage tank system.

2. The department shall issue the award under this paragraph without regard to fault for each petroleum product storage system in an amount equal to the amount of the eligible costs that exceeds a deductible amount of \$5,000 for eligible costs incurred before July 1, 1993, or \$10,000 for eligible costs incurred on or after July 1, 1993. An award issued under this paragraph may not exceed \$195,000 for eligible costs incurred before July 1, 1993, or \$190,000 for eligible costs incurred on or after July 1, 1993 for each occurrence.

#### PROPOSED DISCUSSION

The appellant contended that the department erred when it determined that separate discharges, from gasoline storage tanks, and a waste oil storage tank, were to be deemed separate "occurrences". It argued that only one deductible should have been applied to the site. It further maintained that the contamination under the waste oil tank site was contamination resulting from the gasoline storage tank. However, a map of the area submitted into evidence at the hearing and prepared by the appellant's agent, showed that the plume of contamination from the gasoline tanks did not encompass the geographic area of the waste oil site. The appellant's statement that the contamination on both sites was the result of one particular source was not supported by any scientific or engineering data.

The appellant essentially argues that the language contained in the statute applying deductibles to an "occurrence" should be interpreted and read as being equivalent to a "contamination site". However, there is no reference to deductibles being applied to individual sites. If the legislature had meant otherwise, the more simple application proposed by the appellant could easily have been substituted in the statutory language. There was no evidence that the department has not consistently and uniformly interpreted this term as it did in this case.

#### PROPOSED CONCLUSIONS OF LAW

1. William Trachte is an owner/operator within the meaning of Section 101.143(3) of the statutes.
2. The remediation work undertaken at Watertown, Wisconsin on premises owned by William Trachte, constituted a petroleum product investigation within the meaning of section 101.143(3) of the statutes.
3. The determination by the department to utilize separate deductibles for each petroleum product discharge occurrence was appropriate within the meaning of section 101.143(4)(d) of the statutes.
4. The department's action in denying reimbursement in the amount of \$1,159.86, was reasonable pursuant to section 101.143(4)(d) of the statutes.

#### PROPOSED DECISION

The department's decision dated June 2, 1995, establishing the final reimbursable cost to the applicant, William Trachte, was reasonable and is affirmed.

STATE HEARING OFFICER

David C. Wagner

P9606/mm

**STATE OF WISCONSIN  
Department of Commerce**

*In the Matter of the PECFA Appeal of*

William Trachte  
Insurance Service Ctr  
17835 Hickory Ct  
Brookfield WI 53045

PECFA Claim #53094-4504-16  
Hearing #96-6

Final Decision

**P R E L I M I N A R Y   R E C I T A L S**

Pursuant to a petition for hearing filed June 12, 1995, under § 101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Industry, Labor and Human Relations, now Department of Commerce, a hearing was commenced on October 15, 1996, at Madison, Wisconsin. A proposed decision was issued on February 11, 1997, and the parties were provided a period of twenty (20) days to file objections.

The issue for determination is:

Whether the department's decision dated June 2, 1995, denying reimbursement from the Petroleum Environmental Cleanup Fund Act (PECFA) program in the amount of \$1159.86 was incorrect.

There appeared in this matter the following persons:

**PARTIES IN INTEREST:**

William Trachte  
Insurance Service Ctr  
17835 Hickory Ct  
Brookfield WI 53045

By: William Trachte  
Insurance Service Ctr  
17835 Hickory Ct  
Brookfield WI 53045

Department of Commerce  
201 East Washington Avenue  
P.O. Box 7970  
Madison WI 53707-7970

By: Kristiane Randal  
Assistant General Counsel  
P.O. Box 7969  
Madison WI 53707-7969

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated February 6, 1997.

The matter now being ready for decision, I hereby issue the following

### FINAL DECISION

The Proposed Decision dated February 11, 1997, is hereby adopted as the final decision of the department.

### NOTICE TO PARTIES

#### Request for Rehearing

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send a written request to Department of Commerce, Office of Legal Counsel, P. O. Box 7969, Madison, WI 53707-7969.

Send a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the mailing date of this decision as indicated below. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes

#### Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the mailing date of this hearing decision as indicated below (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Secretary, Department of Commerce, Office of the Secretary, 123 W. Washington Avenue, 9th Floor, P. O. Box 7970, Madison, WI 53707-7970.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Dated: April 24, 1997

Christopher C. Mohrman, Executive Assistant  
Department of Commerce  
P O Box 7970  
Madison WI 53707-7970

cc: Parties in Interest and counsel

Date Mailed: 4-24-97

Mailed By: JP